particulars, which particulars the plaintiff thinks do not add more to or clarify the statement of defence.

No precise legal definition can be found as yet, as to the meaning of "no reasonable defence" or "frivolous or vexatious" or "tending to delay the fair trial of the action", but as can be observed a pleading will not be struck out under this rule "unless it is not only demurrable but something worse than demurrable", that is, such that no legitimate amendment can save it from being demurrable: *per* Chitty J., in *Republic of Peru* v. *Peruvian Guano Co.*[2]

Then again, frivolous or vexatious actions mean cases which are obviously frivolous or vexatious or obviously unsustainable: see *Attorney General of the Duchy of Lancaster* v. *London and North Western Railway Co.*[3]

When a pleading is defective only in not containing particulars to which the other side is entitled, application should be made for a further and better statement of the nature of the claim or defence and not for an order to strike out under this rule. In this case, the plaintiff has asked for further particulars and these have been supplied but not to the satisfaction of the plaintiff in that they seemingly do not contain the particulars the plaintiff needs. So the plaintiff has applied for an order to strike out and rightly so, after having exhausted the other requirements of procedure.

Order 25 rule 4 provides that:

"The court of a judge may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court or a judge may order the action to be stayed or dismissed, or judgment to be entered accordingly as may be just."

Order 19 rule 6(1) provides that:

"In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleadings";

and there is a proviso thereto which is not relevant here.

This last mentioned rule of pleading has been expounded time and time again in numerous cases Thus in *Newport (Monmouth) Slipway Dry Dock & Engineering Co. Ltd.* v. *Payulier*[4] it was said that a party alleging that entries in his opponents' books are false must give particulars stating which entries are objected to and the nature of the objection to each of them.

In *Wallingford* v. *Mutual Society*,[5] the Lord Chancellor, Lord Selborne, said:

"With regard to fraud if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated are insufficient even to amount to an averment of fraud of which any court ought to take notice."

In the same case, Lord Blackburn had this to say:

"So again, if you swear that there was fraud that will not do. It is difficult to define it, but you must give such an extent of definite facts pointing to the fraud as to satisfy the judge that those are facts which make it reasonable that you should be allowed to raise that defence."

The plaintiff's claim, short and simple, is for a sum of $6,131.62 which the defendant is owing on a current account with the plaintiff's bank in Mentakab. In his defence, the defendant denies owing such sum or any sum but states that a current account was opened by him at the instance, advice and or inducement of one Teh Hong Chiang, manager of the plaintiff's bank in Mentakab. The defendant further alleges that the said Teh Hong Chiang has been manipulating the defendant's current account. Another allegation is that the defendant had from time to time signed blank cheques and gave them to the said Teh Hong Chiang, again at the instance, advice and or inducement of the said Teh Hong Chiang. Further allegations of a similar nature were made by the defendant in his defence at paragraph 7, 9 and 11.

The particulars filed by the defendant on the 2nd of February, 1970 are in effect a reiteration of the allegations contained in the statement of defence. Nowhere has the defendant given definite facts as to "the instance, advice and or inducement" nor has he condescended to providing any particular detail of the system of fraud he alleged the said Teh Hong Chiang perpetuated upon him. Except for vague dates for example "in or about the year 1966 and subsequent thereto" contained in paragraph 1 of the defendant's particulars, no other significant detail of dates was provided.

Having considered the law and the facts of this case, it is my opinion that the defendant has not been able to raise any sustainable argument against the plaintiff's application.

I therefore allow the application in terms of the summons-in-chambers dated 16th March, 1970 with costs.

Application allowed.

Solicitors: *Shook Lin & Bok; Athi Nahappan & Co.*

LEE KEE v. GUI SEE & ANOR.

[O.C.J. (Yong J.) October 20, 1971]

[Kuala Lumpur — Civil Suit No. 828 of 1969]

Negligence — Fire — Damage to adjoining property — Liability of owner.

The plaintiff sued the defendants for damages arising out of a fire which spread from the defendant's land to the adjoining land belonging to the plaintiff, and destroyed therein a large number of young rubber trees.

The defendants engaged one *T.K.L.* to clear unwanted trunks of rubber trees that were cut down, including dried leaves branches and weeds, that were on the land. He set fire to them without taking any precautions whatsoever. It was established that at the time when the fires spread to the plaintiff's land, neither *T.K.L.* nor any of the defendants or their servants were present on their estate.

It was contended that *T.K.L.* was an independent contractor and that therefore his negligence would not render the defendants liable.

Held: if a man lights a fire on his land to burn highly combustible material, he is duty bound to take all reasonable precautions to prevent the fire from spreading. This duty is absolute and non-delegable. This responsibility remains notwithstanding the delegation of the performance of this duty to a third party who fails to perform the same.

Cases referred to:-

(1) *Balfour* v. *Barty-King & Anor.* [1957] 1 Q.B. 496 at p. 502.

(2) *Black* v. *Christchurch Finance Co.* [1894] A.C. 48 at p. 54.

CIVIL SUIT.

Joga Singh for the plaintiff.

Au Yeong Khuen for the defendants.

Yong J.: I passed judgment for the plaintiff for $1,500 and costs of the suit, and here are my grounds of judgment which I had promised to give.

The plaintiff sues the defendants for damages arising out of a fire which spread from the defendants' land to the land of the plaintiff and destroyed therein a large number of young rubber trees.

On the evidence before me I find that the defendants for the purpose of replanting their rubber estate had engaged Yap Tong Kee to cut down all the rubber trees and to remove whatever trunks he wanted for his own benefit. The defendants had also engaged another man named Tan Kim Lian to clear away the unwanted trunks, branches, leaves and weeds. To clear these Tan Kim Lian set fire to burn them. Although this was the normal method of clearing the land, he did not keep any proper watch over the fires, nor did he keep any green belt or zone, or dig any trench to prevent the fires from spreading into the plaintiff's land. In fact he took no precautions whatsoever. At the time when the fires spread into the plaintiff's land neither he nor any of the defendants or their servants were present in their estate. I find that Tan Kim Lian and the defendants were negligent in allowing the fires to spread into the plaintiff's land and cause serious damage therein.

It was contended that Tan Kim Lian was an independent contractor and therefore his negligence would not render the defendants liable. I could not agree with this contention.

It seems to me that if a man lights a fire on his land to burn highly combustible material, such as dried leaves, branches and weeds and there is a great danger that it may readily and easily spread to his neighbour's land and cause serious damage, he is duty bound to take all reasonable precautions to prevent the fire from spreading. This duty is absolute and non delegable. He cannot get rid of his responsibility by delegating the performance of this duty to a third party who fails to perform the same.

I am fortified in this view by the case of *Balfour* v. *Barty-King & Anor.*[1] where the defendants were held liable when their independent contractors employed by them to thaw out a frozen pipe in the defendants' house used a blow lamp negligently in proximity to inflamable material and thereby caused a fire which spread to and damaged the plaintiff's house next door. Lord Goddard C.J. reading the judgment of the Court of Appeal said: —

"The question which this court has to consider is whether Havers J. was right in holding that for the spread of the fire from their premises to those of the plaintiff, the defendants are responsible, although the fire was caused by the negligence of independent contractors brought on to the defendants' premises to do the work that I have described. On this matter there seems to be no direct authority. From very early times it seems to have been recognized in our law that there is a special duty to guard against an escape of fire.... The earliest case on the subject which the industry of counsel or our own researches have discovered is *Beaulieu* v. *Finglam* ((1401) Y.B. 2 Hen. 4, fo. 18, pl. 6). The court (there) held that a man shall answer to his neighbour for each person who enters his house by his leave or knowledge or is a guest, if he does any act with a candle or aught else whereby his neighbour's house is burnt. But, said the court, if a man from outside my house and against my will starts a fire in the thatch of my house or elsewhere whereby my house is burned and my neighbour's house is burned as well, for this I shall not be held bound, for this cannot be said to be done by wrong on my part, but is against my will.... We do not think it is necessary to consider the doctrine of *Rylands* v. *Fletcher* ((1868) L.R. 3 H.L. 330) as a separate head of liability. No doubt the doctrine of that case applies to fire, and is subject to the exception of the damage being caused by a stranger.... The defendants here had control over the contractor in that they chose him, they invited him to their premises to do work, and he could have been ordered to leave at any moment. It was left to the men who were sent how to do the work, and in our opinion the defendants are liable to the plaintiff for this lamentable occurrence...".

Then again in the Privy Council case of *Black* v. *Christchurch Finance Co.*[2] where the defendants employed an independent contractor to burn scrub on their land, and the fire spread to the adjoining land of the plaintiff, the defendants were held liable. Lord Shand reading the judgment of the Board said: —

"The lighting of a fire on open bush land, where it may readily spread to adjoining property and cause serious damage, is an operation necessarily attended with great danger, and a proprietor who executes such an operation is bound to use all reasonable precautions to prevent the fire extending to his neighbour's property *(sic utere tuo ut alienum non laedas)*. And if he authorises another to act for him he is bound, not only to stipulate that such precautions shall be taken, but also to see that these are observed, otherwise he will be responsible for the consequences."

In the instant case I hold that the defendants are liable for their own negligence and the negligence of Tan Kim Lian whom they had authorised to carry out the work of clearing the unwanted leaves, branches and weeds on their land.

The next question which this court has to consider is the plaintiff's claim of $7,000 as special damages being expenditure for 21 drums of weed-killer chemical and labour charges in maintaining his rubber estate. As there is no evidence in support of any of these items they are disallowed. For general damages I have taken into consideration the destruction of 225 young rubber trees probably three to four years old, the cost of replanting them, the years the replanted trees would take to reach maturity and the probable loss of profits from the destroyed trees which would have reached maturity in 1970. I assess the general damages at $1,500.

Judgment for the plaintiff.

Solicitors: *Aljeffri & Co.; Lovelace & Hastings.*